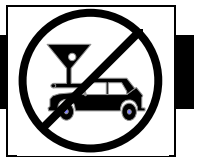
Chapter 3: Section 625 Offenses



Summary of Contents

This chapter lists the elements of the various criminal offenses created by Vehicle Code §625, as well as the related offense of refusing to submit to a preliminary chemical breath analysis. Following the discussion of the elements of each offense, the applicable criminal penalties, licensing sanctions, and vehicle sanctions are addressed. A chart summarizing the information presented in this chapter appears at Section 3.9.

> **Note:** Attempted violations of law must be treated as completed offenses for purposes of imposing licensing and vehicle sanctions under the Vehicle Code. Attempted violations of the Vehicle Code or a substantially corresponding local ordinance must be treated as completed offenses for purposes of imposing criminal penalties. See MCL 257.204b; MSA 9.1904(2), discussed at Sections 1.2(E) and 7.1.

3.1 OUIL/OUID/UBAC — §625(1)

The section addresses the three drunk driving offenses contained in MCL 257.625(1); MSA 9.2325(1), all of which are subject to the same penalties. These are:

- Operating a motor vehicle under the influence of intoxicating liquor. (OUIL)
- Operating a motor vehicle under the influence of a controlled substance. (OUID)
- Operating a motor vehicle with an unlawful bodily alcohol content. (UBAC)

After describing the elements of the foregoing offenses, the discussion in this section will detail the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders.

Note: The following criminal jury instructions may be used in cases involving these offenses:

CJI2d 15.1 OUIL/UBAL Violation

CJI2d 15.2 Elements Common to OUIL, UBAL, and OWI*

*OWI is discussed in Section 3.3.

CJI2d 15.3 Specific Elements of OUIL/UBAL

CJI2d 15.4 Specific Elements of OWI

CJI2d 15.5 Factors in Considering OUIL, UBAL, and OWI*

*The Court of Appeals has criticized CJI2d 15.5 in *People v Calvin*, 216 Mich App 403, 411 n2 (1996).

CJI2d 15.6 Possible Verdicts

CJI2d 15.7 Verdict Form

CJI2d 15.9 Defendant's Decision to Forgo Chemical Testing

A. Operating a Motor Vehicle Under the Influence of Intoxicating Liquor and/or a Controlled Substance (OUIL, OUID) — Elements of the Offense

The elements of this offense are set forth in MCL 257.625(1)(a); MSA 9.2325(1)(a) as follows:

1. Defendant operated a motor vehicle on a Michigan highway, or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.

It is not necessary for a defendant to possess a driver's license in order to be convicted of OUIL or OUID. MCL 257.625(1)(a); MSA 9.2325(1)(a).

See Sections 1.4 for definition of the terms "operating" and "generally accessible to motor vehicles" as used in the statute.

2. At the time defendant operated the motor vehicle, defendant was under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

*But see Section 2.7(B) on special findings and reporting requirements in cases where the defendant was under the influence of a controlled substance.

Persons charged with, and convicted of, operating a motor vehicle under the influence of a controlled substance are treated and sentenced just the same as persons who are charged with operating a motor vehicle under the influence of alcohol. MCL 257.625(1)(a); MSA 9.2325(1)(a).* In *People v Prehn*, 153 Mich App 532 (1986), the Court of Appeals addressed a situation where a defendant had ingested a combination of alcohol and a prescription drug. The information filed in *Prehn* stated only that the defendant had driven under the influence of alcohol; however, the trial

court gave the following instruction in response to a question from the jury about the interaction of the drug with alcohol:

> "The defendant...can only be convicted of [OUIL] if it is proved beyond a reasonable doubt that he was under the influence of intoxicating liquor at the time he was operating a motor vehicle. He is not charged with driving while under the influence of prescription drugs...and...cannot be convicted if he was intoxicated, and his intoxication was solely caused by his consumption of drugs or medication.
>
> "If, however, it is proven beyond a reasonable doubt that the defendant was intoxicated while driving the motor vehicle...and that such intoxication was due to the combined effect of prescription drugs...then the defendant may be convicted of driving under the influence of intoxicating liquor, even though the amount of intoxicating liquor consumed would not alone, absent the effect of the prescription drugs...have rendered him intoxicated to the extent described in the [previous] jury instructions I have given you defining this offense." 153 Mich App at 533–534.

The Court of Appeals disagreed with the defendant's assertion on appeal that the foregoing instruction amounted to an amendment of the information to include a new offense (i.e., OUID). The panel found that the jury could properly consider the effect of the prescription drug on the defendant's susceptibility to alcohol, just as it could consider the defendant's weight in determining whether the amount of alcohol he had consumed was sufficient to render him intoxicated. "The [trial court's] instruction merely clarified for the jury one of the factors which might be of relevance in determining defendant's guilt of the charged offense." 153 Mich App at 535.

"Under the influence" is defined in CJI2d 15.3(2) as follows:

> "'Under the influence of alcohol' means that because of drinking alcohol, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be what is called 'dead drunk,' that is, falling down or hardly able to stand up. On the other hand, just because a person has drunk alcohol or smells of alcohol does not prove, by itself, that the person is under the influence of alcohol. The test is whether, because of drinking alcohol, the defendant's mental or physical condition was significantly affected and the

defendant was no longer able to operate a vehicle in a normal manner."

It will be presumed that the defendant was operating a vehicle under the influence of intoxicating liquor if there was at the time alleged 0.10 grams or more of alcohol per 100 milliliters of the defendant's blood, per 210 liters of breath, or per 67 milliliters of urine. MCL 257.625a(9)(c); MSA 9.2325(1)(9)(c).

For a definition of "controlled substance," see Section 1.4(A).

3. As a result, defendant was substantially deprived of normal control or clarity of mind.

This element was set forth by the Court of Appeals in *People v Raisanen*, 114 Mich App 840, 844 (1982).

4. Defendant was no longer able to operate a vehicle in a normal manner.

In *People v Walters*, 160 Mich App 396, 403 (1987), the defendant Walters was charged with OUIL and convicted by a jury of the lesser included offense of driving while impaired. A police officer testified that he saw Walters drive about 30 feet along the road, stop, and back into a driveway. The officer said he did not notice anything abnormal about Walters's driving; however, Walters smelled of alcohol, his eyes were glazed and bloodshot, and he swayed slightly on his feet. On appeal from his conviction, Walters asserted that he could not be convicted of OUIL or driving while impaired when the officer saw him driving normally. The Court of Appeals affirmed the conviction, holding that the circumstantial evidence presented was sufficient to establish that Walters was unable to drive normally. In so holding, the panel noted that "this case probably represents the low-water mark in the amount of evidence necessary to allow the submission of an OUIL charge to a jury. We do point out, however, that we have no difficulty in the submission of the DWI charge to the jury. The circumstantial evidence was clearly strong enough to allow the jury to consider a DWI charge." 160 Mich App at 405.

In *People v Crawford*, 187 Mich App 344, 352 (1991), the Court of Appeals held that a conviction of OUIL and felonious driving resulting from the same incident does not constitute multiple punishment for the same offense and therefore does not violate the double jeopardy clauses of the federal and Michigan constitutions.

B. Operating a Motor Vehicle with an Unlawful Bodily Alcohol Content (UBAC) — Elements of the Offense

The elements of this offense are set forth in MCL 257.625(1)(b); MSA 9.2325(1)(b) as follows:

1. Defendant operated a motor vehicle on a Michigan highway, or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking.

It is not necessary for a defendant to possess a driver's license in order to be convicted of UBAC. MCL 257.625(1); MSA 9.2325(1).

For discussion of the meaning of "operating" a motor vehicle, and places "generally accessible to motor vehicles," see Section 1.4 above.

2. At the time of operating the motor vehicle, defendant had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.*

MCL 257.625(1)(b); MSA 9.2325(1)(b) creates a per se misdemeanor offense permitting a conviction based solely on the defendant's bodily alcohol content, without regard to whether alcohol affected the defendant's ability to operate the vehicle. See *People v Calvin*, 216 Mich App 403, 407 (1996). UBAC is an alternative charge to OUIL. The prosecutor may charge both OUIL and UBAC as alternative theories, but the defendant can be convicted of only one of these offenses. Accordingly, the prosecutor should proceed on a single count complaint alleging alternative theories for conviction. *People v Nicolaides*, 148 Mich App 100, 103 (1985).

*See Section 1.3 on proposed amendments to §625(1) during the 1999 legislative session. One amendment would provide for two levels of UBAC offenses, with increased penalties for a bodily alcohol content of 0.20 or more. Another amendment would lower the 0.10 standard to 0.08.

C. Criminal Penalties and Other Sanctions for Violations of §625(1)

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of violating Vehicle Code §625(1). See Section 2.9 for discussion of general sentencing considerations in all drunk driving cases (e.g., alcohol assessment, payment of costs, sentencing guidelines, etc.). See Section 2.10 on licensing sanctions generally. Section 2.11 addresses general procedures for forfeiture and immobilization of vehicles. Section 1.4 contains definitions of the following terms:

- Conviction — Section 1.4(B).
- Prior conviction — Section 1.4(G).
- Substantially corresponding ordinance or state statute — Section 1.4(I).

1. First-time Offenders

Criminal Penalties — Under MCL 257.625(8)(a); MSA 9.2325(8)(a), the court may order one or more of the following criminal penalties for first-time offenders who violate §625(1):

- Community service for not more than 45 days.

- Imprisonment for not more than 93 days. This prison term may be suspended. See MCL 257.625(8)(d); MSA 9.2325(8)(d).
- A fine of not less than $100.00 or more than $500.00.

License Sanctions — If the offender has no prior convictions within seven years, the Secretary of State shall suspend his or her license for 180 days. After the first 30 days of the suspension have elapsed, the Secretary of State may issue the offender a restricted license during all or a specified portion of the suspension, if the person is otherwise eligible for a license. MCL 257.319(8)(a), (12); MSA 9.2019(8)(a), (12).

Points — The Secretary of State will assess six points for a violation of §625(1) or a local ordinance substantially corresponding to it. MCL 257.320a(1)(b); MSA 9.2020(1)(1)(b).

Vehicle Sanctions — Upon conviction of a violation of §625(1) (or a local ordinance that substantially corresponds with it), the court may order vehicle immobilization for not more than 180 days. MCL 257.904d(1)(a); MSA 9.2604(4)(1)(a) and MCL 257.625(8)(e); MSA 9.2325(8)(e).

2. Offenders Who Violate §625(1) Within Seven Years of a Prior Conviction

Criminal Penalties — For offenders who violate §625(1) within seven years of one prior conviction, MCL 257.625(8)(b); MSA 9.2325(8)(b) provides for imposition of a fine of not less than $200.00 or more than $1,000.00. Additionally, the court shall impose one or more of the following penalties:

- Imprisonment for not less than five days or more than one year. This prison term shall not be suspended,* and not less than 48 hours of it shall be served consecutively.
- Community service for not less than 30 days or more than 90 days.

*MCL 257.625(8)(d); MSA 9.2325(8)(d).

License Sanctions — Under MCL 257.303(2)(c), (4); MSA 9.2003(2)(c), (4), offenders convicted of violating §625(1) within seven years of another prior conviction listed in the statute will be subject to mandatory driver's license revocation for a minimum of one year.*

*See Section 2.10(B) for a list of prior convictions that result in revocation.

Vehicle Sanctions — For a conviction under §625(1) within seven years after a prior conviction, the court shall order vehicle immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered. MCL 257.904d(1)(c); MSA 9.2604(4)(1)(c). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n; MSA 9.2325(14).

3. Offenders Who Violate §625(1) Within Ten Years of Two or More Prior Convictions

Criminal Penalties — For offenders who violate §625(1) within ten years of two or more prior convictions, MCL 257.625(8)(c); MSA 9.2325(8)(c) provides for imposition of a fine of not less than $500.00 or more than $5,000.00. Additionally, the court shall impose either of the following penalties:

- Imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years.
- Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed shall be served consecutively.

A prison term under MCL 257.625(8)(c); MSA 9.2325(8)(c) shall not be suspended. MCL 257.625(8)(d); MSA 9.2325(8)(d).

License Sanctions — Under MCL 257.303(2)(f); MSA 9.2003(2)(f), the Secretary of State must revoke the licenses of §625(1) offenders who have two prior convictions of any of the offenses listed in the statute within ten years,* if any of the convictions resulted from arrest on or after January 1, 1992. The period of revocation imposed under Vehicle Code §303(2)(f) shall expire in not less than five years, if the date of the revocation is within seven years after the date of a prior revocation or denial. MCL 257.303(4); MSA 9.2003(4).

*See Section 2.10(B) for a list of prior convictions that result in revocation.

Vehicle Sanctions — For a conviction under §625(1) within ten years after two or more prior convictions, the court shall order vehicle immobilization for not less than 1 year or more than 3 years, unless the vehicle is forfeited. MCL 257.904d(1)(d); MSA 9.2604(4)(1)(d). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n; MSA 9.2325(14).

Effective June 1, 2000, the Secretary of State shall refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d), (2)(d); MSA 9.1919(1)(d), (2)(d). This provision also applies to co-owners and co-lessees of the vehicle.

3.2 Permitting Another to Drive OUIL/OUID/UBAC/OWI — §625(2)

MCL 257.625(2); MSA 9.2325(2) makes it a crime to knowingly permit or authorize another person to drive: 1) under the influence of alcohol and/or a controlled substance (OUIL/OUID); 2) with an unlawful bodily alcohol content (UBAC), or, (3) while the person's ability to operate the vehicle is visibly impaired due to the consumption of alcohol and/or a controlled substance (OWI). This section outlines the elements of these offenses and the statutory penalties, licensing sanctions, and vehicle sanctions.

A. Elements of the Offense

1. The defendant was the owner, the person in charge, or the person in control of a motor vehicle; and,

2. The defendant authorized or knowingly permitted another to operate the motor vehicle on a Michigan highway, or other place open to the general public, or generally accessible to motor vehicles, including an area designated for parking; and,

See Section 1.4 for definitions of "operate," and "generally accessible to motor vehicles."

3. The operator of the vehicle was OUIL/OUID/UBAC/OWI, i.e.:

a. Was under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance, so that the operator's mental or physical condition was significantly affected and he or she was no longer able to operate a vehicle in a normal manner; or,

b. Was operating the vehicle with an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine; or,

c. Was visibly impaired in his or her ability to operate the vehicle due to the consumption of alcohol and/or a controlled substance.

See Section 3.1(A) for a definition of "under the influence." See Section 3.3(A) for discussion of what constitutes "visible impairment." A "controlled substance" is defined in Section 1.4(A).

Elements 3a and 3b above represent alternative elements to this offense. In *People v Nicolaides*, 148 Mich App 100, 103 (1985), the Court of Appeals held that for purposes of Vehicle Code §625(1), UBAC and OUIL are alternative charges. The prosecutor may charge both OUIL and UBAC as alternative theories, but the defendant can be convicted of only one of these offenses. If the reasoning in *Nicolaides* is applied to cases arising under §625(2), the

prosecutor should proceed against the defendant who allowed another person to drive on a single count complaint alleging alternative theories for conviction.

Element 3b above creates a per se misdemeanor offense permitting conviction based solely on the driver's bodily alcohol content, without regard to whether the alcohol affected the driver's ability to operate the vehicle.

It appears that before the defendant may be convicted of this offense, the person whom the defendant authorized or knowingly permitted to operate the motor vehicle would first have to be convicted of OUIL/OUID/UBAC.

B. Penalties for a Violation of 625(2)

Criminal Penalties — MCL 257.625(9); MSA 9.2325(9) sets forth three levels of criminal penalties for violations of §625(2), which depend upon the seriousness of injuries caused by the violation:

- If the person operating the motor vehicle causes the **death** of another (in violation of Vehicle Code §625(4)) the defendant is subject to felony penalties consisting of imprisonment for not more than five years or a fine of not less than $1,500.00 or more than $10,000.00, or both. MCL 257.625(9)(b); MSA 9.2325(9)(b).
- If the person operating the motor vehicle causes **serious impairment of body function*** of another (in violation of Vehicle Code §625(5)) the defendant is subject to felony penalties consisting of imprisonment for not more than two years or a fine of not less than $1,000.00 or more than $5,000.00, or both. MCL 257.625(9)(c); MSA 9.2325(9)(c).
- In all **other cases**, the defendant is subject to misdemeanor penalties consisting of imprisonment for not more than 93 days or a fine of not less than $100.00 or more than $500.00, or both. MCL 257.625(9)(a); MSA 9.2325(9)(a).

*See Section 1.4(H) for the definition of "serious impairment of a body function."

Licensing and Vehicle Sanctions — Because the defendant is not the driver, no licensing or vehicle sanctions are imposed for this offense.

Note: A conviction under Vehicle Code §625(2) is not counted as a prior conviction for purposes of enhancing penalties for repeat drunk driving offenders. See Section 1.4(G).

3.3 Operating While Visibly Impaired (OWI) — §625(3)

This section addresses the elements of and sanctions for offenses under Vehicle Code §625(3), operating a vehicle while visibly impaired ("OWI"). OWI is a lesser offense of OUIL/OUID and UBAC, so that a defendant charged with OUIL, OUID, or UBAC may be found guilty of OWI. MCL 257.625(3); MSA 9.2325(3).

Note: The following criminal jury instructions may be used in OWI cases:

CJI2d 15.2 Elements Common to OUIL, UBAL, and OWI

CJI2d 15.4 Specific Elements of OWI

CJI2d 15.5 Factors in Considering OUIL, UBAL, and OWI*

CJI2d 15.6 Possible Verdicts

CJI2d 15.7 Verdict Form

CJI2d 15.9 Defendant's Decision to Forgo Chemical Testing

*The Court of Appeals has criticized CJI2d 15.5 in *People v Calvin*, 216 Mich App 403, 411 n2 (1996).

A. Elements of the Offense

The elements of OWI are as follows:

1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles.

It is not necessary for a defendant to possess a driver's license in order to be convicted of OWI. MCL 257.625(3); MSA 9.2325(3).

For discussion of the meaning of "operating" a motor vehicle and "generally accessible to motor vehicles," see Section 1.4.

2. Defendant had consumed intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

See Section 1.4(A) for the definition of "controlled substance."

In *People v Prehn*, 153 Mich App 532 (1986), the Court of Appeals addressed a situation where a defendant convicted of OWI had ingested a combination of alcohol and a prescription drug. The information filed in *Prehn* stated only that the defendant had driven under the influence of alcohol; however, the trial court gave the following instruction in response to a question from the jury about the interaction of the drug with alcohol:

> "The defendant...can only be convicted of [OUIL] if it is proved beyond a reasonable doubt that he was under the influence of intoxicating liquor at the time he was operating a motor vehicle. He is not charged with driving while under the influence of prescription drugs...and...cannot be convicted if he was intoxicated, and his intoxication was solely caused by his consumption of drugs or medication.

> "If, however, it is proven beyond a reasonable doubt that the defendant was intoxicated while driving the motor vehicle...and that such intoxication was due to the combined effect of...prescription drugs...then the defendant may be convicted of driving under the influence of intoxicating liquor, even though the amount of intoxicating liquor consumed would not alone, absent the effect of the prescription drugs...have rendered him intoxicated to the extent described in the [previous] jury instructions I have given you defining this offense.
>
> "The same principle apples to the lesser included offense of operating a motor vehicle while [impaired]." 153 Mich App at 533–534.

The Court of Appeals disagreed with the defendant's assertion on appeal that the foregoing instruction amounted to an amendment of the information to include a new offense (i.e., OUID). The panel found that the jury could properly consider the effect of the prescription drug on the defendant's susceptibility to alcohol, just as it could consider the defendant's weight in determining whether the amount of alcohol he had consumed was sufficient to render him intoxicated. "The [trial court's] instruction merely clarified for the jury one of the factors which might be of relevance in determining defendant's guilt of the charged offense." 153 Mich App at 535.

3. Because of the consumption of intoxicating liquor and/or a controlled substance, defendant's ability to operate the vehicle was visibly impaired.

The Michigan Supreme Court has defined visible impairment as follows:

> "[The] defendant's ability to drive was so weakened or reduced by consumption of intoxicating liquor that defendant drove with less ability than would an ordinary, careful and prudent driver. Such weakening or reduction of ability to drive must be visible to an ordinary, observant person." *People v Lambert*, 395 Mich 296, 305 (1975), cited in *People v Calvin*, 216 Mich App 403, 407 (1996). See also CJI 2d 15.4.

The degree of a person's intoxication for purposes of §625(3) may be established by chemical analysis tests of the person's blood, breath, or urine, or by testimony of someone who saw the impaired driving. *People v Calvin, supra*, 216 Mich App at 407–408.

Impairment of ability to operate a motor vehicle for purposes of §625(3) will be presumed if at the time alleged, there is more than 0.07 grams but less than 0.10 grams of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. MCL 257.625a(9)(b); MSA 9.2325(1)(9)(b). A bodily alcohol content of 0.07 grams or less raises a presumption that the defendant's ability to operate a motor vehicle was not impaired. MCL 257.625a(9)(a); MSA 9.2325(1)(9)(a). These presumptions are rebuttable, as explained in *Calvin*, *supra*:

> "The presumptions *against* the accused in [§625a(9)(b)] must be construed as permissive or rebuttable to ensure that the burden of proving all elements of the offense beyond a reasonable doubt remains on the prosecution. MRE 302(b). Similarly, the presumption *in favor of* the accused in [§625a(9)(a)] must be construed as permissive, rather than as a conclusive presumption of innocence, because it is not an essential element of the offense of DWI that a person's BAC exceed 0.07 percent....Hence, the validity of a presumption that arises from chemical analysis testing is within the province of the trier of fact to weigh, not in the abstract, but, rather, in connection with all the evidence in the case, and thereafter to accept or reject it....The Legislature clearly contemplated that a person whose BAC was 0.07 percent or less could still be visibly impaired.
>
> "Accordingly, we conclude that [§625a(9)(a)] embodies a permissive or rebuttable presumption that a defendant's ability to operate a motor vehicle is not impaired where chemical analysis of the person's blood, breath, or urine indicates a BAC of 0.07 percent or less." 216 Mich App at 408–410. [Emphasis in original.]

Circumstantial evidence may also be used to establish that a person was driving while visibly impaired. In *People v Walters*, 160 Mich App 396, 403 (1987), the defendant Walters was charged with OUIL and convicted by a jury of the lesser included offense of driving while impaired. A police officer testified that he saw Walters drive about 30 feet along the road, stop, and back into a driveway. The officer said he did not notice anything abnormal about Walters's driving; however, Walters smelled of alcohol, his eyes were glazed and bloodshot, and he swayed slightly on his feet. On appeal from his conviction, Walters asserted that he could not be convicted of OUIL or driving while impaired when the officer saw him driving normally. The Court of Appeals affirmed the conviction, holding that the circumstantial evidence presented was sufficient to establish that Walters

was unable to drive normally. In so holding, the panel noted that "this case probably represents the low-water mark in the amount of evidence necessary to allow the submission of an OUIL charge to a jury. We do point out, however, that we have no difficulty in the submission of the DWI charge to the jury. The circumstantial evidence was clearly strong enough to allow the jury to consider a DWI charge." 160 Mich App at 405.

B. Penalties for OWI

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of violating Vehicle Code §625(3). See Section 2.9 for discussion of general sentencing considerations in all drunk driving cases (e.g., alcohol assessment, payment of costs, sentencing guidelines, etc.). See Section 2.10 on licensing sanctions generally. Section 2.11 addresses general procedures for forfeiture and immobilization of vehicles. Section 1.4 contains definitions of the following terms:

- Conviction — Section 1.4(B).
- Prior conviction — Section 1.4(G).
- Substantially corresponding ordinance or state statute — Section 1.4(I).

1. First-time Offenders

Criminal Penalties — First-time offenders convicted of violating §625(3) are subject to one or more of the following penalties under MCL 257.625(10)(a); MSA 9.2325(10)(a):

- Community service for not more than 45 days.
- Imprisonment for not more than 93 days. This prison term may be suspended. MCL 257.625(10)(d); MSA 9.2325(10)(d).
- A fine of not more than $300.00.

Licensing Sanctions — If there are no prior convictions within seven years and the offender's impairment was due to alcohol alone, the Secretary of State shall suspend the offender's license for 90 days. The period of suspension is increased to 180 days if the impairment was caused by consumption of a controlled substance or a combination of intoxicating liquor and controlled substance. The offender may be issued a restricted license during all or a specified portion of the suspension, if he or she is otherwise eligible for a license. MCL 257.319(8)(b); MSA 9.2019(8)(b).

The Secretary of State will also assess four points for a violation of §625(3) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(f); MSA 9.2020(1)(1)(f).

Vehicle Sanctions — Upon conviction of a first offense under §625(3) or a local ordinance substantially corresponding to it, the court may in its discretion order vehicle immobilization for not more than 180 days. MCL 257.904d(1)(a); MSA 9.2604(4)(1)(a), MCL 257.625(10)(e); MSA 9.2325(10)(e).

2. Repeat Offenders — Violation Within Seven Years of One Prior Conviction

Criminal Penalties — If a violation of §625(3) occurs within seven years of one prior conviction, MCL 257.625(10)(b); MSA 9.2325(10)(b) provides that the defendant shall be sentenced to a fine of not less than $200.00 or more than $1,000.00 and one or more of the following:

- Imprisonment for not less than five days or more than one year. Not less than 48 hours of the prison term shall be served consecutively, and the prison term shall not be suspended. MCL 257.625(10)(d); MSA 9.2325(10)(d).
- Community service for not less than 30 days or more than 90 days.

*See Section 2.10(B) for a list of prior convictions that result in revocation.

Licensing Sanctions — Under MCL 257.303(2)(c); MSA 9.2003(2)(c), the Secretary of State must revoke the licenses of §625(3) offenders who have one prior conviction of any of the offenses listed in the statute within seven years.* The period of revocation imposed under Vehicle Code §303(2)(c) shall be for a minimum of one year. MCL 257.303(4); MSA 9.2003(4).

Vehicle Sanctions — For a conviction under §625(3) within seven years after a prior conviction, the court shall order vehicle immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered. MCL 257.904d(1)(c); MSA 9.2604(4)(1)(c). Forfeiture may be ordered in the courts' discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n; MSA 9.2325(14).

3. Repeat Offenders — Violation Within Ten Years of Two or More Prior Convictions

Criminal Penalties — If the violation occurs within 10 years of two or more prior convictions, MCL 257.625(10)(c); MSA 9.2325(10)(c) provides that the defendant is subject to felony sanctions, which consist of a fine of not less than $500.00 or more than $5,000.00 and either of the following:

- Imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years.
- Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment shall be served consecutively.

Terms of imprisonment under MCL 257.625(10)(c); MSA 9.2325(10)(c) shall not be suspended. MCL 257.625(10)(d); MSA 9.2325(10)(d).

Licensing Sanctions — Under MCL 257.303(2)(f); MSA 9.2003(2)(f), the Secretary of State must revoke the licenses of §625(3) offenders who have two prior convictions of any of the offenses listed in the statute within ten years, if any of the convictions resulted from arrest on or after January 1, 1992.* The period of revocation imposed under Vehicle Code §303(2)(f) shall expire in not less than five years, if the date of revocation occurred within seven years after the date of a prior revocation or denial. MCL 257.303(4); MSA 9.2003(4).

*See Section 2.10(B) for a list of prior convictions that result in revocation.

Vehicle Sanctions — For a conviction under §625(3) within ten years after two or more prior convictions, the court shall order vehicle immobilization for not less than 1 year or more than 3 years, unless the vehicle is forfeited. MCL 257.904d(1)(d); MSA 9.2604(4)(1)(d). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n; MSA 9.2325(14).

Effective June 1, 2000, the Secretary of State shall refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner or lessee is suspended, revoked, or denied for a third or subsequent violation of Vehicle Code §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d), (2)(d); MSA 9.1919(1)(d), (2)(d). This provision also applies to co-owners and co-lessees of the vehicle.

3.4 OUIL/OUID/UBAC/OWI Causing Death of Another — §625(4)

A. Elements of the Offense

Drunk driving causing the death of another person is subject to felony penalties under MCL 257.625(4); MSA 9.2325(4). The elements* of this offense are as follows:

*See CJI2d 15.11 for a jury instruction on OUIL/OUID/ UBAL/OWI causing death.

1. The defendant, whether licensed or not, operated a motor vehicle on the date in question.

CJI2d 15.11 states that "[o]perating means driving or having actual physical control of the vehicle." See also Section 1.4(F) for more discussion of "operating" a vehicle.

2. The defendant operated the vehicle on a Michigan highway or other place open to the public or generally accessible to motor vehicles, including a designated parking area.

For discussion of what constitutes an area "generally accessible to motor vehicles," see Section 1.4(C).

3. The defendant was operating the vehicle in violation of §625(1) or (3) because he or she: a) was under the influence of alcohol and/or a controlled substance; b) had an unlawful bodily alcohol content; or, c) was visibly impaired in his or her ability to operate the vehicle because of the consumption of intoxicating liquor and/or a controlled substance.

For discussion of "under the influence," "unlawful bodily alcohol content," and "visibly impaired," see Sections 3.1(A), 3.1(B), and 3.3(A), respectively.

4. The defendant voluntarily decided to drive knowing that he or she had consumed alcohol and might be intoxicated.

In *People v Lardie*, 452 Mich 231, 256, 259 (1996), the Michigan Supreme Court held that §625(4) creates a general intent offense, requiring proof that the defendant intended to drive knowing that he or she might be intoxicated. In so holding, the Court rejected an argument on appeal that the statute unconstitutionally violated the defendant's right to due process because it did not require proof of either a mens rea or some form of negligence.

5. By the operation of the vehicle, the defendant caused the death of another person.

The defendant's decision to drive while intoxicated must substantially contribute to another person's death. In proving causation, the prosecutor must establish that the defendant's decision to drive while intoxicated produced a change in the defendant's operation of the vehicle that caused another's death. The statute does not penalize a driver if the injury was unavoidable regardless of the driver's intoxication. *People v Lardie*, *supra*, 452 Mich at 258–260.

> **Note:** The majority opinion in *Lardie* noted that its standard for causation is consistent with the common-law causation standard articulated in *People v Tims*, *People v Kneip*, 449 Mich 83, 97–99 (1995), which were consolidated cases involving involuntary manslaughter with a vehicle. In *Tims* and *Kneip*, the Supreme Court held that a defendant's conduct need only be "a" proximate cause of death, rather than "the" sole cause. See *People v Lardie*, *supra*, 452 Mich at 260 n 51. For a jury instruction on the victim's contributory negligence, see CJI2d 16.20.

In cases involving negligent homicide under MCL 750.324; MSA 28.556, the Court of Appeals has held that evidence of the decedent's failure to wear a seat belt was inadmissible at trial to prove contributory negligence because it was not relevant to causation of the accident. *People v Burt*, 173 Mich App 332, 334 (1988); *People v Richardson*, 170 Mich App 470, 472 (1988).*

*See Section 9.2 on negligent homicide.

Defendants charged with violating Vehicle Code §625(4) are frequently subject to common-law murder charges as well. In the following cases, the Michigan Supreme Court considered issues arising from charging defendants with these multiple counts:

- **Double Jeopardy**

  A conviction of both involuntary manslaughter under MCL 750.321; MSA 28.553 and OUID causing death under Vehicle Code §625(4) is not violative of state or federal double jeopardy provisions. *People v Price,* 214 Mich App 538 (1995).

- **Distinguishing Requisite Intent for Second-degree Murder and OUIL Causing Death**

  In *People v Goecke,* 457 Mich 442 (1998), the Supreme Court distinguished "malice" as an element of second-degree murder under MCL 750.317; MSA 28.549 from the intent required to establish OUIL causing death. To establish "malice" in a second-degree murder case, the prosecutor must establish "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." 457 Mich at 464. The third form of malice may be implied "when the defendant does an act with a high probability that it will result in death and does it with a base antisocial motive and with wanton disregard for human life." 457 Mich at 467. The "wanton" nature of the defendant's actions distinguishes the intent requirement for second-degree murder from the intent required for OUIL causing death. Noting that the misconduct in the consolidated cases before it went beyond drunk driving, the *Goecke* majority specifically rejected the contention that drunk driving alone is sufficient to establish the element of malice for purposes of sustaining a conviction or deciding whether there is sufficient evidence to bind a defendant over for trial on charges of second-degree murder. 457 Mich at 469.

B. Penalties for the Offense

Persons convicted of violating §625(4) are subject to the felony penalties, licensing sanctions, and vehicle sanctions described below. See Section 2.9 for discussion of general sentencing considerations in all drunk driving cases (e.g., alcohol assessment, payment of costs, sentencing guidelines, etc.). See Section 2.10 on licensing sanctions generally. Section 2.11 addresses general

procedures for forfeiture and immobilization of vehicles. Section 1.4 contains definitions of the following terms:

- Conviction — Section 1.4(B).
- Prior conviction — Section 1.4(G).
- Substantially corresponding ordinance or state statute — Section 1.4(I).

1. Felony Penalties Applicable to All §625(4) Offenders

Under MCL 257.625(4); MSA 9.2325(4), both first-time and repeat offenders convicted of violating §625(4) are subject to the following felony sanctions:

- Imprisonment for not more than 15 years; and/or,
- A fine of not less than $2,500.00 or more than $10,000.00.

2. Licensing and Vehicle Sanctions for First-time Offenders

Licensing Sanctions — Upon receipt of the offender's record of conviction under §625(4) or another state's law that substantially corresponds to §625(4), the Secretary of State shall revoke the offender's license. Once revoked, the offender may not obtain a new license for at least one year. MCL 257.303(2)(d), (4)(a)(i); MSA 9.2003(2)(d), (4)(a)(i).

The Secretary of State will also assess six points for a violation of §625(4) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(b); MSA 9.2020(1)(1)(b).

Vehicle Sanctions — The court has discretion to order vehicle forfeiture under MCL 257.625n; MSA 9.2325(14) for a first-time conviction under §625(4). If the court does not order forfeiture of the vehicle, it must order vehicle immobilization for up to 180 days under MCL 257.625(4), 257.904d(1)(b); MSA 9.2325(4), 9.2604(4)(1)(a). The statutes contain no minimum time for immobilization.

3. Licensing and Vehicle Sanctions for Repeat Offenders

The Legislature has imposed lengthier licensing and vehicle sanctions on those who violate §625(4) within given time periods after certain prior convictions have been entered on their records:

Licensing Sanctions — Upon receipt of the offender's record of conviction under §625(4) or another state's law that substantially corresponds to §625(4), the Secretary of State shall revoke the offender's license. Once revoked, the offender may not obtain a new license for at least five years, if the revocation is imposed within seven years after the date of a prior license revocation or denial. MCL 257.303(2)(d), (4)(a)(ii); MSA 9.2003(2)(d), (4)(a)(ii).

Vehicle Sanctions — If a person is convicted of violating §625(4) within seven years after one prior conviction, the court has discretion to order vehicle forfeiture under MCL 257.625n; MSA 9.2325(14). If the court does not order forfeiture of the vehicle, it must order vehicle immobilization for not less than 90 days or more than 180 days under MCL 257.904d(1)(c); MSA 9.2604(4)(1)(c).

The court also has discretion to order vehicle forfeiture where a person is convicted of violating §625(4) within ten years after two or more prior convictions. If the court does not order forfeiture in this case, it must order immobilization for not less than one year or more than three years. MCL 257.904d(1)(d); MSA 9.2604(4)(1)(d).

Effective June 1, 2000, the Secretary of State shall refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d), (2)(d); MSA 9.1919(1)(d), (2)(d). This provision also applies to co-owners and co-lessees of the vehicle.

3.5 OUIL/OUID/UBAC/OWI Causing Serious Impairment of a Body Function — §625(5)

A. Elements of the Offense

Drunk driving causing another person to suffer serious impairment of a body function is a felony offense under MCL 257.625(5); MSA 9.2325(5). The elements* of this offense are as follows:

*See CJI2d 15.12 for a jury instruction on OUIL/OUID/ UBAL/OWI causing serious impairment of a body function.

1. The defendant, whether licensed or not, operated a motor vehicle on the date in question.

CJI2d 15.12 states that "[o]perating means driving or having actual physical control of the vehicle." See also Section 1.4(F) for more discussion of "operating" a vehicle.

2. The defendant operated the vehicle on a Michigan highway or other place open to the public or generally accessible to motor vehicles, including a designated parking area.

For discussion of what constitutes an area "generally accessible to motor vehicles," see Section 1.4(C).

3. The defendant was operating the vehicle in violation of §625(1) or (3) because he or she: a) was under the influence of alcohol and/or a controlled substance; b) had an unlawful bodily alcohol content; or, c) was visibly

impaired in his or her ability to operate the vehicle because of the consumption of intoxicating liquor and/or a controlled substance.

For discussion of "under the influence," "unlawful bodily alcohol content," and "visibly impaired," see Sections 3.1(A), 3.1(B), and 3.3(A), respectively.

4. The defendant voluntarily decided to drive knowing that he or she had consumed alcohol and might be intoxicated.

The Michigan Supreme Court has addressed the element of criminal intent in a case involving OUIL causing death under Vehicle Code §625(4). In *People v Lardie*, 452 Mich 231, 256, 259 (1996), the Court held that §625(4) creates a general intent offense, requiring proof that the defendant intended to drive knowing that he or she might be intoxicated. In so holding, the Court rejected an argument on appeal that the statute unconstitutionally violated the defendant's right to due process because it did not require proof of either a mens rea or some form of negligence.

5. By the operation of the vehicle, the defendant caused another person to suffer serious impairment of a body function.

See Section 1.4(H) for the definition of "serious impairment of a body function."

The Michigan Supreme Court has addressed the standard for determining causation in a case involving OUIL causing death under §625(4). In *People v Lardie*, *supra*, 452 Mich at 258–260, the Court stated that the defendant's decision to drive while intoxicated must substantially contribute to another person's death. In proving causation, the prosecutor must establish that the defendant's decision to drive while intoxicated produced a change in the defendant's operation of the vehicle that caused another's death. The statute does not penalize a driver if the injury was unavoidable regardless of the driver's intoxication.

> **Note:** The majority opinion in *Lardie* noted that its standard for causation is consistent with the common-law causation standard articulated in *People v Tims*, *People v Kneip*, 449 Mich 83, 97–99 (1995), which were consolidated cases involving involuntary manslaughter with a vehicle. In *Tims* and *Kneip*, the Supreme Court held that a defendant's conduct need only be "a" proximate cause of death, rather than "the" sole cause. See *People v Lardie, supra*, 452 Mich at 260 n 51. For a jury instruction on the victim's contributory negligence, see CJI2d 16.20.

In cases involving negligent homicide under MCL 750.324; MSA 28.556,* the Court of Appeals has held that evidence of the decedent's failure to wear a seat belt was inadmissible at trial to prove contributory negligence because it was not relevant to causation of the accident. *People v Burt*, 173

*See Section 9.2 on negligent homicide.

Mich App 332, 334 (1988); *People v Richardson*, 170 Mich App 470, 472 (1988).

B. Penalties

Persons convicted of violating Vehicle Code §625(5) are subject to the felony penalties, licensing sanctions, and vehicle sanctions described below. See Section 2.9 for discussion of general sentencing considerations in all drunk driving cases (e.g., alcohol assessment, payment of costs, sentencing guidelines, etc.). See Section 2.10 on licensing sanctions generally. Section 2.11 addresses general procedures for forfeiture and immobilization of vehicles. Section 1.4 contains definitions of the following terms:

- Conviction — Section 1.4(B).
- Prior conviction — Section 1.4(G).
- Substantially corresponding ordinance or state statute — Section 1.4(I).

1. Criminal Penalties Applicable to All §625(5) Offenders

Under Vehicle Code §625(5), both first-time and repeat offenders are subject to the following felony sanctions:

- Imprisonment for not more than five years; and/or
- A fine of not less than $1,000.00 or more than $5,000.00.

2. Licensing and Vehicle Sanctions for First-time Offenders

Licensing Sanctions — Upon receipt of the offender's record of conviction under §625(5) or another state's law that substantially corresponds to §625(5), the Secretary of State shall revoke the offender's license. Once revoked, the offender may not obtain a new license for at least one year. MCL 257.303(2)(d), (4)(a)(i); MSA 9.2003(2)(d), (4)(a)(i).

The Secretary of State will assess six points for a violation of §625(5) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(b); MSA 9.2020(1)(1)(b).

Vehicle Forfeiture and Immobilization — The court has discretion to order vehicle forfeiture under MCL 257.625n; MSA 9.2325(14) for a first-time conviction under §625(5). If the court does not order forfeiture of the vehicle, it must order vehicle immobilization for up to 180 days under MCL 257.625(5), 257.904d(1)(b); MSA 9.2325(5), 9.2604(4)(1)(b). The statutes contain no minimum time for immobilization.

3. Licensing and Vehicle Sanctions for Repeat Offenders

The Legislature has imposed lengthier licensing and vehicle sanctions on those who violate §625(5) within given time periods after certain prior convictions have been entered on their records:

Licensing Sanctions — Upon receipt of the offender's record of conviction under §625(5) or another state's law that substantially corresponds to §625(5), the Secretary of State shall revoke the offender's license. Once revoked, the offender may not obtain a new license for at least five years, if the revocation is imposed within seven years after the date of a prior license revocation or denial. MCL 257.303(2)(d), (4)(a)(ii); MSA 9.2003(2)(d), (4)(a)(ii).

Vehicle Sanctions — As is the case for first-time offenders, the court has discretion to order vehicle forfeiture under MCL 257.625n; MSA 9.2325(14) for repeat offenders under §625(5). If the court does not order forfeiture, it must order immobilization as follows:

- If a person is convicted of violating §625(5) within seven years after one prior conviction, and forfeiture is not ordered, the court must order vehicle immobilization for not less than 90 days or more than 180 days under MCL 257.904d(1)(c); MSA 9.2604(4)(1)(c).
- If a person is convicted of violating §625(5) within ten years after two or more prior convictions, and the court does not order forfeiture, it must order immobilization for not less than one year or more than three years. MCL 257.904d(1)(d); MSA 9.2604(4)(1)(d).

In addition to the foregoing vehicle sanctions, effective June 1, 2000, the Secretary of State shall refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d), (2)(d); MSA 9.1919(1)(d), (2)(d). This provision also applies to co-owners and co-lessees of the vehicle.

3.6 "Zero Tolerance" Violations — §625(6)

A. Elements of the Offense

MCL 257.625(6); MSA 9.2325(6) imposes misdemeanor sanctions upon persons under age 21 who drive with any bodily alcohol content. The elements of this offense are as follows:

1. The defendant, whether licensed or not, operated a motor vehicle on the date in question.

See Section 1.4(F) for discussion of "operating" a vehicle.

2. The defendant operated the vehicle on a Michigan highway or other place open to the public or generally accessible to motor vehicles, including a designated parking area.

For discussion of what constitutes an area "generally accessible to motor vehicles," see Section 1.4(C).

3. The defendant was less than 21 years of age.

4. The defendant had "any bodily alcohol content."

The statute defines "any bodily alcohol content" to mean either of the following:

- An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.*
- Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as part of a generally recognized religious service or ceremony.

*See Section 1.3 on changes to these standards that were proposed during the 1999 legislative session.

In a prosecution for a violation of §625(6), the defendant bears the burden of proving that the consumption of intoxicating liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence. MCL 257.625(22); MSA MSA 9.2325(22).

B. Penalties

The discussion below sets forth the criminal penalties and licensing sanctions imposed for first-time and repeat offenders convicted of violating §625(6). The Vehicle Code imposes no vehicle sanctions (i.e., immobilization or forfeiture) for §625(6) violations.

See Section 2.9 for discussion of general sentencing considerations in all drunk driving cases (e.g., alcohol assessment, payment of costs, sentencing guidelines, etc.). See Section 2.10 on licensing sanctions generally. Section 1.4 contains definitions of the following terms:

- Conviction — Section 1.4(B).
- Prior conviction — Section 1.4(G).
- Substantially corresponding ordinance or state statute — Section 1.4(I).

See Miller, *Juvenile Traffic Benchbook* (MJI, 1999) for discussion of criminal proceedings involving persons less than 17 years of age.

1. Criminal Penalties

MCL 257.625(11)(a); MSA 9.2325(11)(a) provides that first-time offenders convicted of violating §625(6) are punishable by one or both of the following:

- Community service for not more than 45 days.
- A fine of not more than $250.00.

If the violation occurs within seven years of one or more prior convictions, the person may be sentenced to one or more of the following under MCL 257.625(11)(b); MSA 9.2325(11)(b):

- Community service for not more than 60 days.
- A fine of not more than $500.00.
- Imprisonment for not more than 93 days.

2. Licensing Sanctions

After a violation of §625(6), the Secretary of State shall suspend a person's driver's license for 30 days if the person has no prior convictions within seven years. The Secretary of State may issue the person a restricted license during all or a specified portion of suspension, if the person is otherwise eligible for a license. MCL 257.319(8)(c), (12); MSA 9.2019(8)(c), (12).

If the person has one or more prior convictions of violating §625(6) within seven years, the Secretary of State shall suspend a person's driver's license for 90 days upon conviction of a repeat violation of §625(6). MCL 257.319(8)(d), (17); MSA 9.2019(8)(d), (17). There is no provision in the statute for issuing a restricted license to persons subject to this 90-day suspension.

If the person has one or more prior convictions other than a conviction of violating §625(6) within seven years, the Secretary of State shall revoke the person's driver's license for a minimum of one year upon conviction of a violation of §625(6). MCL 257.303(2)(c), (4); MSA 9.2003(2)(c), (4).

The Secretary of State will assess four points for a violation of §625(6) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(f); MSA 9.2020(1)(1)(f).

3.7 Child Endangerment — §625(7)

A. Elements of the Offense

Under MCL 257.625(7); MSA 9.2325(7), it is a misdemeanor for the driver of a vehicle to commit certain drunk driving offenses while a person less than age 16 is occupying the vehicle. The elements of child endangerment are as follows:

1. The defendant, whether licensed or not, operated a motor vehicle on the date in question.

See Section 1.4(F) for discussion of "operating" a vehicle.

2. The defendant operated the vehicle on a Michigan highway or other place open to the public or generally accessible to motor vehicles, including a designated parking area.

For discussion of what constitutes an area "generally accessible to motor vehicles," see Section 1.4(C).

3. While defendant was operating the vehicle, another person less than 16 years of age was occupying the vehicle.

4. The defendant was operating the vehicle in violation of Vehicle Code §625(1), (3), (4), (5), or (6).

This statute creates a separate offense for endangering a person under 16 years of age while committing one of the following drunk driving offenses:

a) Driving under the influence of alcohol and/or a controlled substance in violation of §625(1);

b) Driving with an unlawful bodily alcohol content in violation of §625(1);

c) Driving while visibly impaired because of the consumption of intoxicating liquor and/or a controlled substance in violation of §625(3);

d) OUIL/OUID/UBAC/OWI causing death, in violation of §625(4);

e) OUIL/OUID/UBAC/OWI causing serious impairment of a body function, in violation of §625(5); or,

f) being under age 21 and driving with any bodily alcohol content, in violation of §625(6).

A person may be charged with, convicted of, and punished for a violation of §625(4) or (5)* that occurs while the person is violating §625(7). MCL 257.625(7)(d); MSA 9.2325(7)(d).

*OUIL/OUID/UBAL/OWI causing death or serious injury.

B. Penalties for Violation of §625(7)

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of violating §625(7). See Section 2.9 for discussion of general sentencing considerations in all drunk driving cases (e.g., alcohol assessment, payment of costs, sentencing guidelines, etc.). See Section 2.10 on licensing sanctions

generally. Section 2.11 addresses general procedures for forfeiture and immobilization of vehicles. Section 1.4 contains definitions of the following terms:

- Conviction — Section 1.4(B).
- Prior conviction — Section 1.4(G).
- Substantially corresponding ordinance or state statute — Section 1.4(I).

1. Criminal Penalties

Section 625(7) imposes two sets of criminal penalties, depending upon the underlying drunk driving offense that gives rise to the charges of child endangerment.

a. If the underlying offense is a violation of §625(1), (3), (4), or (5), first-time offenders are subject to misdemeanor penalties, while repeat offenders are subject to felony penalties.

- MCL 257.625(7)(a)(i); MSA 9.2325(7)(a)(i) subjects first-time offenders to misdemeanor penalties consisting of a fine of not less than $200.00 or more than $1,000.00, and to one or more of the following:
  - Imprisonment for not less than five days or more than one year. Not less than 48 hours of the prison term shall be served consecutively, and the prison term shall not be suspended.
  - Community service for not less than 30 days or more than 90 days.
- If the violation of §625(7) occurs within seven years of a prior conviction or within ten years of two or more prior convictions, MCL 257.625(7)(a)(ii); MSA 9.2325(7)(a)(ii) subjects the offender to felony penalties consisting of a fine of not less than $500.00 or more than $5,000.00, and to either of the following:
  - Imprisonment for not less than one year or more than five years.
  - Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment shall be served consecutively, and the term of imprisonment shall not be suspended.

b. If the underlying offense is a violation of §625(6), both first-time and repeat offenders are subject to misdemeanor penalties.

- MCL 257.625(7)(b)(i); MSA 9.2325(7)(b)(i) subjects first-time offenders to misdemeanor penalties consisting of one or more of the following:
  - Community service for not more than 60 days.
  - A fine of not more than $500.00.
  - Imprisonment for not more than 93 days.
- If the violation of §625(7) occurs within seven years of a prior conviction or within ten years of two or more prior convictions, MCL 257.625(7)(b)(ii); MSA 9.2325(7)(b)(ii) subjects the offender to a fine of not less than $200.00 or more than $1,000.00 and to one or more of the following:
  - Imprisonment for not less than five days or more than one year. Not less than 48 hours of the imprisonment shall be served consecutively, and the term of imprisonment shall not be suspended.
  - Community service for not less than 30 days or more than 90 days.

2. Licensing Sanctions

No prior convictions — The Secretary of State shall suspend a person's driver's license for a violation of §625(7) for 180 days if the person has no prior convictions within seven years. The secretary of state may issue the person a restricted license after the first 90 days of suspension. MCL 257.319(8)(e); MSA 9.2019(8)(e).

Repeat offenders — Under MCL 257.303(2)(c), (4); MSA 9.2003(2)(c), (4), offenders convicted of violating §625(7) within seven years of another prior conviction listed in the statute will be subject to mandatory driver's license revocation for a minimum of one year. This period increases to five years for offenders convicted of violating §625(7) within ten years of two other prior convictions listed in the statute, if the revocation occurs within seven years after the date of any prior revocation or denial. MCL 257.303(2)(f), (4); MSA 9.2003(2)(f), (4).*

*See Section 2.10(B) for a list of prior convictions that result in revocation.

Points — The Secretary of State will assess six points for a violation of §625(7) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(b); MSA 9.2020(1)(1)(b). However, if a person is convicted of a violation of §625(4) or (5)* that occurs while the person is violating §625(7), the Secretary of State shall not assess points under §320a for both violations where the charges arise out of the same transaction. MCL 257.625(7)(d); MSA 9.2325(7)(d).

*OUIL/OUID/UBAC/OWI causing death or serious injury.

3. Vehicle Sanctions

First-time offenders — MCL 257.625(7)(c); MSA 9.2325(7)(c) provides that sentences for first-time offenders may include vehicle forfeiture under MCL 257.625n; MSA 9.2325(14) or immobilization for up to 180 days under MCL 257.904d(1)(a); MSA 9.2604(4)(1)(a), in the court's discretion.

Repeat offenders — If the violation of §625(7) occurs within seven years of a prior conviction or within ten years of two or more prior convictions, immobilization is mandatory, unless the court has exercised its discretion to order vehicle forfeiture. MCL 257.625(7)(c); MSA 9.2325(7)(c). The immobilization periods are as follows:

- For a conviction within seven years after a prior conviction, not less than 90 days or more than 180 days. MCL 257.904d(1)(c); MSA 9.2604(4)(1)(c).
- For a conviction within ten years after two or more prior convictions, not less than one year or more than three years. MCL 257.904d(1)(d); MSA 9.2604(4)(1)(d).

Effective June 1, 2000, the Secretary of State shall refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d), (2)(d); MSA 9.1919(1)(d), (2)(d). This provision also applies to co-owners and co-lessees of the vehicle.

3.8 Refusal to Submit to a Preliminary Chemical Breath Analysis — §625a(2)

This section addresses the misdemeanor and civil sanctions for a driver's refusal to submit to a preliminary chemical breath analysis under MCL 257.625a(2); MSA 9.2325(1)(2)

> **Note:** For discussion of the circumstances where police may require a preliminary chemical breath analysis, see Section 2.1(B). A preliminary chemical breath analysis should be distinguished from a chemical test of a person's blood, urine, or breath pursuant to the implied consent statute, MCL 257.625c; MSA 9.2325(3). A discussion of the implied consent statute appears at Section 2.3.

A. Elements of the Offense/Infraction

MCL 257.625a(2); MSA 9.2325(1)(2) sets forth the following elements for this offense or infraction:

1. The defendant operated a vehicle on a Michigan highway or other place open to the public or generally accessible to motor vehicles, including a designated parking area.

For discussion of what constitutes "operating" a vehicle, or an area "generally accessible to motor vehicles," see Section 1.4.

2. Police have reasonable cause to believe that the defendant:

a. Was operating a commercial motor vehicle while his or her blood, breath, or urine contained any measurable amount of alcohol or detectable presence of alcohol;

b Had consumed alcohol so that it affected his or her ability to operate the vehicle; or,

c. Was under 21 years old and was operating the vehicle with any bodily alcohol content as defined in Vehicle Code §625(6).*

*See also MCL 436.1703(5), MSA -- for a similar offense for minors who are suspected of consuming alcohol.

See Section 3.6(A) for a definition of "any bodily alcohol content" under §625(6).

In criminal cases, "reasonable cause" is shown by facts leading a fair-minded person of average intelligence and judgment to believe that an incident has occurred or will occur. See *People v Richardson*, 204 Mich App 71, 79 (1994).

3. An officer requested the defendant to submit to a preliminary chemical breath analysis; and,

4. The defendant refused to submit to the preliminary chemical breath analysis.

B. Penalties/Civil Sanctions

If the driver was operating a commercial motor vehicle, refusal to submit to a preliminary chemical breath analysis is a misdemeanor punishable by imprisonment for not more than 93 days and/or a maximum $100.00 fine. Additionally, the officer will issue a 24 hour out-of-service order. Upon requesting the preliminary chemical breath analysis, the police officer shall advise the driver of the penalties for this misdemeanor. MCL 257.625a(4)–(5); MSA 9.2325(1)(4)–(5).

In cases other than those involving a commercial motor vehicle, refusal to submit to a preliminary chemical breath analysis is a state civil infraction.

No licensing or vehicle sanctions are imposed for this infraction; however, the Secretary of State will assess two points on the driving record of a person under age 21 who refuses to submit to a preliminary breath test. MCL 257.320a(1)(o); MSA 9.2020(1)(1)(o).